

By

Carona

S.B. No. 842

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2(7), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed ~~[by-licensed-persons]~~ pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

SECTION 2. Section 3(b), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commissioner may issue an emergency order, including a cease and desist order, as necessary to enforce this Act if the commissioner determines that an emergency exists requiring immediate action to protect the public health and safety. The

1 order may be issued without notice and hearing or with any notice
2 and hearing that the commissioner considers practicable under the
3 circumstances. If an emergency order is issued under this
4 subsection without a hearing, the commissioner shall set the time
5 and place for a hearing to affirm, modify, or set aside the
6 emergency order.

7 SECTION 3. Section 3B, Air Conditioning and Refrigeration
8 Contractor License Law (Article 8861, Vernon's Texas Civil
9 Statutes), is amended to read as follows:

10 Sec. 3B. REQUIREMENTS TO PERFORM AIR CONDITIONING AND
11 REFRIGERATION CONTRACTING [~~LICENSE-REQUIRED~~]. (a) A [~~Unless the~~
12 ~~person is exempted under Section 6 of this Act,~~ a] person may not
13 perform air conditioning and refrigeration contracting unless:

14 (1) the person is exempt under Section 6 of this Act;

15 or

16 (2) the person practices within the scope of a
17 municipal license as permitted by Section 9 of this Act [~~without a~~
18 ~~license under this Act~~].

19 (b) A person, corporation, partnership, or other legal
20 entity may not offer to perform or perform air conditioning and
21 refrigeration contracting unless the person, corporation,
22 partnership, or other legal entity:

23 (1) employs full-time at each permanent office of the
24 person, corporation, partnership, or other legal entity at least
25 one licensee whose license qualifies the person for all of the air
26 conditioning and refrigeration contracting performed or offered to
27 be performed by that office;

1 (2) files with the advisory board the name of at least
2 one person who meets the requirements of Subdivision (1) of this
3 subsection; and

4 (3) uses only appropriately licensed individuals and
5 the assistants of appropriately licensed individuals to perform air
6 conditioning and refrigeration contracting.

7 (c) If a person whose name is on file with the advisory
8 board as required by Subsection (b)(2) of this section no longer
9 meets the requirements of Subsection (b)(1) of this section, the
10 person, corporation, partnership, or other legal entity that
11 qualifies under Subsection (b) of this section to offer to perform
12 and to perform air conditioning and refrigeration contracting shall
13 comply with Subsection (b)(2) of this section not later than the
14 30th day after the first day the person whose name is on file with
15 the advisory board no longer meets the requirements of Subsection
16 (b)(1) of this section.

17 SECTION 4. Sections 4(f) and (g), Air Conditioning and
18 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
19 Civil Statutes), are amended to read as follows:

20 (f) The application must be made on a form prescribed by the
21 commissioner and must specify the class of license and each
22 endorsement the applicant seeks. The application must be verified
23 and must be accompanied by:

24 (1) ~~[evidence-of-the-insurance-coverage-required-under~~
25 ~~this-Act;~~

26 [+2+] a statement of the applicant's practical
27 experience; and

1 (2) [~~3~~] the examination fee.

2 (g) The commissioner shall issue an air conditioning and
3 refrigeration contractor license to an applicant who possesses the
4 required qualifications, passes the appropriate examinations,
5 furnishes evidence of the insurance coverage required under this
6 Act, and pays the [~~examination-fee-and-the~~] original license fee
7 required by this Act. An applicant who fails an examination is
8 eligible for reexamination.

9 SECTION 5. Section 5(a), Air Conditioning and Refrigeration
10 Contractor License Law (Article 8861, Vernon's Texas Civil
11 Statutes), is amended to read as follows:

12 (a) A violation of this Act or a rule adopted under this Act
13 is a ground for the denial, suspension, or revocation of a license
14 issued under this Act. The failure to provide proper installation,
15 service, or [~~and~~] mechanical integrity under this Act constitutes a
16 violation of this Act. An intentional or knowing misrepresentation
17 of necessary services, services to be provided, or services that
18 have been provided, or a fraudulent promise made to influence,
19 persuade, or induce an individual to contract for services
20 constitutes a violation of this Act and a ground for the suspension
21 or revocation of a license issued under this Act.

22 SECTION 6. Section 6(a), Air Conditioning and Refrigeration
23 Contractor License Law (Article 8861, Vernon's Texas Civil
24 Statutes), is amended to read as follows:

25 (a) Except as provided by Section 10 of this Act, this
26 [~~This~~] Act does not apply to a person who:

27 (1) performs air conditioning and refrigeration

1 contracting in a building owned solely by the person [him] as the
2 person's [his] home;

3 (2) performs air conditioning or refrigeration
4 maintenance work if (i) the person is a maintenance person [man] or
5 maintenance engineer who is a regular bona fide employee of the
6 property owner, the property lessee, or the management company
7 managing the property where the maintenance work is being
8 performed, (ii) the work is performed in connection with the
9 business in which the person is employed, and (iii) the person and
10 the person's employer referred to in (i) above do not engage in the
11 occupation of air conditioning and refrigeration contracting for
12 the general public;

13 (3) performs air conditioning and refrigeration
14 contracting and is regularly employed by a regulated electric or
15 gas utility;

16 (4) is licensed as a professional engineer under The
17 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
18 Statutes), performs work in connection with the business in which
19 the person is employed, and does not engage in the practice of air
20 conditioning and refrigeration contracting for the general public;

21 (5) performs process cooling or heating work for an
22 industrial operation such as a chemical plant, petrochemical plant,
23 refinery, natural gas plant, or natural gas treating plant when
24 employed by that operation;

25 (6) performs air conditioning and refrigeration
26 contracting on:

27 (A) a portable or self-contained ductless air

1 conditioning or refrigeration product that has a cooling capacity
2 of three tons or less;

3 (B) a portable or self-contained heating product
4 that does not require the forced movement of air outside the
5 heating unit; or

6 (C) environmental air conditioning equipment
7 that is intended for temporary use and is not fixed in place; or

8 (7) performs air conditioning services only on a motor
9 vehicle air conditioner [~~conditioning-unit~~] or who employs a person
10 who performs air conditioning services only on a motor vehicle air
11 conditioner [~~conditioning-unit~~].

12 SECTION 7. Section 7, Air Conditioning and Refrigeration
13 Contractor License Law (Article 8861, Vernon's Texas Civil
14 Statutes), is amended to read as follows:

15 Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed
16 under this Act shall notify the municipal authority who has control
17 of the enforcement of regulations relative to air conditioning and
18 refrigeration contracting in the municipality in which the person
19 is engaged in air conditioning and refrigeration contracting that
20 the person has obtained a state license.

21 (b) The notification must be in the form required by the
22 municipality.

23 (c) A municipal authority may impose a fee to process a
24 notification under this section in an amount reasonable and
25 necessary to cover the municipality's cost of administering this
26 section.

27 SECTION 8. The Air Conditioning and Refrigeration Contractor

1 License Law (Article 8861, Vernon's Texas Civil Statutes) is
2 amended by adding Section 7A to read as follows:

3 Sec. 7A. ENFORCEABILITY OF CERTAIN CONTRACTS. (a) A
4 person, corporation, partnership, or other legal entity may not
5 enforce a contract or collect a fee for air conditioning and
6 refrigeration contracting unless the person, corporation,
7 partnership, or other legal entity meets the requirements of
8 Section 3B of this Act at the time the contract is entered into and
9 at the time the contract is performed.

10 (b) The commissioner shall adopt rules relating to the
11 manner in which proof may be presented under this section.

12 SECTION 9. Section 8, Air Conditioning and Refrigeration
13 Contractor License Law (Article 8861, Vernon's Texas Civil
14 Statutes), is amended to read as follows:

15 Sec. 8. PENALTY. Except as provided in Section 9, a person
16 commits an offense if the person knowingly or intentionally engages
17 in air conditioning and refrigeration contracting without a license
18 issued under this Act. An offense under this section is a Class C
19 [B] misdemeanor.

20 SECTION 10. The Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes) is amended by adding Section 8A to read as follows:

23 Sec. 8A. ENFORCEMENT. (a) A municipal or county law
24 enforcement officer may issue a citation for a violation of Section
25 3B of this Act.

26 (b) A representative of the department or a municipal air
27 conditioning or refrigeration inspector within the jurisdiction of

1 the municipality may issue a citation to a person who violates
2 Section 10(e) or (f) of this Act.

3 SECTION 11. Section 9, Air Conditioning and Refrigeration
4 Contractor License Law (Article 8861, Vernon's Texas Civil
5 Statutes), is amended to read as follows:

6 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
7 municipality of this state that meets the requirements of this
8 section is valid under the terms of the license within that
9 municipality. However, a license issued by the commissioner [~~under~~
10 ~~this-Act~~] is valid throughout the state, and the license holder and
11 people under the supervision of the license holder are not required
12 to hold a municipal license to practice air conditioning and
13 refrigeration contracting in any municipality within this state.

14 (b) An applicant for a municipal license must:

15 (1) pass an examination that covers the same subjects
16 that are covered by an examination required by the commissioner for
17 the type of work to be permitted by the municipal license; and

18 (2) meet the experience requirement that is at least
19 equivalent to the experience requirement in Section 4(e) of this
20 Act.

21 (c) A municipality may by ordinance adopt and enforce
22 standards for air conditioning and refrigeration contractors that
23 are consistent with the standards established under this Act. The
24 municipality shall report violations of the ordinance to the
25 commissioner not later than the 10th day after the date on which
26 the municipality takes action to enforce the ordinance. Conviction
27 of an offense under the municipal ordinance is a ground for the

1 denial, suspension, or revocation of a license issued under this
2 Act.

3 SECTION 12. Sections 10(g) and (h), Air Conditioning and
4 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
5 Civil Statutes), are amended to read as follows:

6 (g) A purchaser may purchase refrigerants if that person's
7 use is exempt under Section 6(a)(1), (3), (5), (6), or (7) of this
8 Act if the person is authorized to do so under other state or
9 federal law and is not required to provide to a seller evidence of
10 the exemption.

11 (h) A person commits an offense if the person purchases a
12 refrigerant or equipment containing a refrigerant in this state in
13 violation of Subsection (c), (e), or (f) of this section. An
14 offense under this subsection is a Class C [B] misdemeanor.

15 SECTION 13. Section 23(c), The Real Estate License Act
16 (Article 6573a, Vernon's Texas Civil Statutes), is amended by
17 adding Subdivision (4) to read as follows:

18 (4) In addition to the license requirements imposed
19 under Subdivisions (1)-(3) of this subsection, a business entity
20 that inspects an environmental air conditioning system, commercial
21 refrigeration system, or process cooling or heating system as part
22 of a real estate inspection conducted under this Act must employ a
23 person who holds the appropriate air conditioning and refrigeration
24 contractor licenses and endorsements under the Air Conditioning and
25 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
26 Civil Statutes) or an appropriate municipal license. An employee
27 who does not hold a license or endorsement under the Air

1 Conditioning and Refrigeration Contractor License Law (Article
2 8861, Vernon's Texas Civil Statutes) or a municipal license may
3 perform the inspection under the direction of the license holder.
4 For purposes of this Act, "inspection" of environmental air
5 conditioning, commercial refrigeration, and process cooling and
6 heating equipment means an inspection that includes the use of
7 electronic instruments, gauges, thermometers, mechanical
8 instruments, or other meters that require direct in-line connection
9 to the refrigerant system.

10 SECTION 14. Section 3(m), Air Conditioning and Refrigeration
11 Contractor License Law (Article 8861, Vernon's Texas Civil
12 Statutes), is repealed.

13 SECTION 15. Section 7(c), Air Conditioning and Refrigeration
14 Contractor License Law (Article 8861, Vernon's Texas Civil
15 Statutes), as added by this Act, applies only to a fee imposed for
16 a notification processed on or after the effective date of this
17 Act.

18 SECTION 16. Section 7A, Air Conditioning and Refrigeration
19 Contractor License Law (Article 8861, Vernon's Texas Civil
20 Statutes), as added by this Act, applies only to a contract entered
21 into on or after the effective date of this Act. A contract
22 entered into before the effective date of this Act is governed by
23 the law in effect on the day the contract was entered into, and the
24 former law is continued in effect for that purpose.

25 SECTION 17. (a) Except as provided by Subsection (b) of
26 this section, the punishment for an offense under Section 8 or
27 10(h), Air Conditioning and Refrigeration Contractor License Law

1 (Article 8861, Vernon's Texas Civil Statutes), regardless of
2 whether the offense is committed before, on, or after the effective
3 date of the amendments to those sections made by this Act, is the
4 punishment provided by Section 8 or 10(h), Air Conditioning and
5 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
6 Civil Statutes), as amended by this Act.

7 (b) This section does not apply to the punishment of a
8 defendant finally convicted before the effective date of the
9 amendments to Sections 8 and 10(h), Air Conditioning and
10 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
11 Civil Statutes), made by this Act. The punishment for a final
12 conviction that exists immediately before the effective date of the
13 amendments to those sections made by this Act is unaffected by this
14 Act.

15 SECTION 18. (a) Except as provided by Subsection (b) of
16 this section, Section 9, Air Conditioning and Refrigeration
17 Contractor License Law (Article 8861, Vernon's Texas Civil
18 Statutes), as amended by this Act, applies only to a municipal
19 license that is issued or renewed on or after the effective date of
20 this Act. A municipality subject to that section shall adopt
21 examination requirements in compliance with that section not later
22 than January 1, 2000.

23 (b) To continue to engage in the practice of air
24 conditioning and refrigeration contracting after September 1, 1999,
25 a person who holds a municipal license on the effective date of
26 this Act must satisfy the examination requirements imposed under
27 Section 9(b), Air Conditioning and Refrigeration Contractor License

1 Law (Article 8861, Vernon's Texas Civil Statutes), as amended by
2 this Act, not later than June 1, 2000.

3 SECTION 19. (a) Except as provided by Subsection (b) of
4 this section, this Act takes effect September 1, 1999.

5 (b) Sections 6(a), 8, and 10(g) and (h), Air Conditioning
6 and Refrigeration Contractor License Law (Article 8861, Vernon's
7 Texas Civil Statutes), as amended by this Act, take effect
8 immediately.

9 (c) Not later than December 31, 1999, the commissioner of
10 licensing and regulation shall adopt rules as required by Section
11 7A, Air Conditioning and Refrigeration Contractor License Law
12 (Article 8861, Vernon's Texas Civil Statutes), as added by this
13 Act.

14 (d) Section 23(c), The Real Estate License Act (Article
15 6573a, Vernon's Texas Civil Statutes), as amended by this Act,
16 applies only to a real estate inspection that is conducted on or
17 after the effective date of this Act. A real estate inspection
18 conducted before that date is governed by the law in effect on the
19 date that the inspection occurs, and the former law is continued in
20 effect for that purpose.

21 SECTION 20. The importance of this legislation and the
22 crowded condition of the calendars in both houses create an
23 emergency and an imperative public necessity that the
24 constitutional rule requiring bills to be read on three several
25 days in each house be suspended, and this rule is hereby suspended,
26 and that this Act take effect and be in force according to its
27 terms, and it is so enacted.

S.B. No. 842

By Caron

A BILL TO BE ENTITLED

AN ACT:

Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

3-3-99

MAR 04 1999

Filed with the Secretary of the Senate

Read and referred to Committee on ECONOMIC DEVELOPMENT

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent
_____ yeas, _____ nays

Read second time, _____, and ordered engrossed by: { unanimous consent
a viva voce vote
_____ yeas, _____ nays

Senate and Constitutional 3 Day Rule suspended by a vote of _____ yeas, _____ nays.

Read third time, _____, and passed by: { A viva voce vote
_____ yeas, _____ nays

SECRETARY OF THE SENATE

OTHER ACTION:

Engrossed

Sent to House

Engrossing Clerk _____

Received from the Senate

Read first time and referred to Committee on _____

Reported _____ favorably (as amended) (as substituted)

Sent to Committee on (Calendars) (Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting.

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Returned to Senate.

CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays